

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1456 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER

Versus

ISHVARBHAI KARSHANBHAI PARMAR

Appearance:

MR KC RAVAL for Petitioner

MR UI VYAS for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/09/1999

ORAL JUDGEMENT

Heard Mr. Raval, the learned advocate appearing for the petitioner Corporation. In this matter, the rule has been issued by this court on 23rd February, 1989. While issuing rule, notice as to interim relief was also issued by this Court. Thereafter, on 17.12.1990, it was directed by this Court that the name of the respondent workman be reinserted on the list of badli workman

subject to the final outcome of the petition.

2. The facts of the present case are that the respondent was working as conductor in the petitioner corporation as a badli workman. On 7.3.86, the respondent was on duty as a conductor and his bus was checked at Hansot by the checking party and the allegations were made against him that some passengers were found without tickets though fare was already collected from them. It was also alleged that the respondent had not issued tickets of Rs. 2 denomination as also had not issued tickets of the denomination of Rs. 18, inspite of the fact that the fare was also recovered for the same. It was also alleged that the tickets of lesser denominations were issued and also that the way bill was not properly closed. On the basis of the said allegations, the checking party made report. Thereafter, memo was served to the respondent which was replied by the respondent and, thereafter, his services were terminated on 16.1.1987 by the petitioner corporation by deleting his name from the list of badli workman. Said action on the part of the petitioner corporation was challenged by the respondent before the labour Court Surat in Reference No. 176 of 1987. Before the labour Court, the petitioner corporation has produced the written statement and both the parties had not led any oral evidence before the labour court. The respondent had filed purshis under section 11A of the Industrial Disputes Act, 1947 relying upon the decision of this Court in the matter of GE Board versus RM Parmar, reported in 1982 GLH 254. The labour court, after considering the submissions made from both the sides, came to the conclusion that the petitioner has not produced any evidence before the labour court to prove the charge of misconduct alleged to have been committed by the respondent workman. The labour court, therefore, on the basis of the evidence produced before it, came to the conclusion that the order of termination passed by the petitioner corporation by deleting the respondent's name from the list of badli workers is contrary to the principles of natural justice. The labour court, therefore, passed the award in favour of the respondent workman by setting aside the impugned order of termination of service and directed the petitioner to reinstate the respondent in service to his original post without any back wages and also granted continuity of service under the impugned award dated 29th February, 1988. Said award has been challenged by the petitioner corporation by filing the present petition under Article 227 of the Constitution of India.

It was contended by Mr. Raval, the learned advocate appearing for the petitioner Corporation that the respondent was a Badli workman and has committed serious misconduct and allowed unauthorizedly the passengers to travel in the bus. He has also contended that the respondent being the Badli Workman, it was not incumbent upon the petitioner to initiate detailed inquiry as per the service rules of the Corporation. Therefore, there was no need to initiate detailed departmental inquiry by affording opportunity of hearing and producing evidence etc. to the respondent workman before passing the orders adverse to him.

I have considered the contentions raised by the learned advocate appearing for the petitioner corporation. Prima facie, this contention is not correct because if the corporation wants to pass any orders adverse on the basis of the allegations and misconduct alleged to have been committed by the respondent workman, then, it was incumbent for the corporation to afford him an opportunity of raising defence and controverting the allegations levelled against him in accordance with the principles of natural justice. The controversy involved in the present petition is squarely covered by the decision reported in 1993(1) GLR 442.

Therefore, in view of the above decision of this court, the action of the corporation in deleting the name of the respondent from the wait list of Badli worker is contrary to the principles of natural justice. In my view, the labour Court has passed the award impugned in this petition after appreciating the evidence produced before it and no infirmity or irregularity has been pointed out by the learned advocate for the corporation warranting any interference by this court in exercise of the extraordinary plenary powers under Article 227 of the Constitution of India. Therefore, the petition is required to be rejected. Here, it should be noted that in view of the directions issued by this Court at the time of issuing rule, name of the respondent has been reinserted in the list of Badli Driver and now, by passage of time, it is possible that now, he may have become regular driver of the ST Corporation. Therefore, in view of the passage of time also, now, it is not just and proper to interfere with the award of the labour court. Hence this petition is dismissed. Rule is discharged with no order as to costs.

Vyas